

1 BILL NO. R-81-02-42

2 RESOLUTION NO. R-

17-81

3
4 A RESOLUTION approving and ratifying
5 lease purchase agreements with Midwest
6 Fire & Safety Equipment Company, Inc.
7 for firefighting equipment.

8 WHEREAS, the City of Fort Wayne entered into contracts
9 with Midwest Fire & Safety Equipment Company, Inc. to secure
10 through lease-purchase arrangements two (2) quick attach pum-
11 pers and one (1) extending water tower for the Fire Department
12 through purchase orders 4-09297 and 4-09296 respectively; and

13 WHEREAS, the Common Council of the City of Fort Wayne
14 approved said contracts and purchase orders, which included the
15 sum necessary to secure said equipment on a lease-purchase
16 basis, under Ordinance No. S-146-80 and Ordinance No. S-144-80;
17 and

18 WHEREAS, Midwest Fire & Safety Equipment Company, Inc.
19 is assigning its rights and interests in said contracts to the
20 Merchants National Bank & Trust Company of Indianapolis through
21 U.S. Municipal Funding, Inc. as contemplated in their bid on
22 said equipment.

23 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL
24 OF THE CITY OF FORT WAYNE, INDIANA:

25 SECTION 1. That the Common Council approves and rati-
26 fies the lease purchase agreement documents to be entered into
27 in concert with Midwest Fire & Safety Equipment Company, Inc.,
28 U.S. Municipal Funding, Inc. and Merchants National Bank &
29 Trust Company, the total gross payments specified in said agree-
30 ments are \$123,454.60 and \$47,898.03, respectively, which sums
31 coincide with said contracts.

32 SECTION 2. That the Mayor of the City of Fort Wayne is
granted full approval and authority to execute said lease-

purchase agreements.

SECTION 3. That this Resolution shall be in full force and effect from and after its passage and approval by the Mayor.

Vivian L. Schmidt
COUNCILMAN

APPROVED AS TO FORM AND
LEGALITY FEBRUARY 20, 1981.

J. E. Hoffman
JOHN E. HOFFMAN, CITY ATTORNEY

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, 19____, the _____ day of _____, at _____ o'clock _____ M., E.S.T.

DATE: _____

CHARLES W. WESTERMAN
CITY CLERK

Read the third time in full and on motion by V. Schmidt, seconded by Stier, and duly adopted, placed on its passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>8</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>NUCKOLS</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT, D.</u>	_____	_____	_____	<u>✓</u>	_____
<u>SCHMIDT, V.</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 2-24-81

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) _____ (GENERAL) _____ (ANNEXATION) _____ (SPECIAL) _____ (APPROPRIATION) _____ ORDINANCE (RESOLUTION) No. B-17-81 on the 24th day of February, 1981.

Charles W. Westerman ATTEST:
CHARLES W. WESTERMAN - CITY CLERK

(SEAL)
John Nuckols
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 25th day of February, 1981, at the hour of 11:30 o'clock 07 M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 5th day of March 1981, at the hour of 4 o'clock P M., E.S.T.

Winfield C. Moses, Jr.
WINFIELD C. MOSES, JR.
MAYOR

This Lease, made and entered into this 21st day of November, 1980, by and between U.S. MUNICIPAL FUNDING, INC., a corporation organized under the laws of the State of Indiana and having its principal office in the City of Indianapolis, Indiana

(hereinafter referred to as "Lessor"), and City of Fort Wayne

a municipal corporation of the State of Indiana (hereinafter referred to as "Lessee");

WITNESSETH:

That in consideration of the mutual agreements herein contained, the parties do hereby covenant to and with each other as follows:

1. **Property Description.** The Lessor does hereby lease to the Lessee the following described property, hereinafter referred to as the "Leased Equipment":

1-50 ft. Tele-Squirt extending water tower with remote controlled 1000 G.P.M. nozzle, 360° rotation pedestal, attached to ladder for retro-fit on 1972 Mack pumper chassis.

2. **Term.** The term of this Lease shall commence on April 1, 1981, which shall be on or about the date of acceptance of the Leased Equipment by the Lessee, and, unless earlier terminated, shall continue until the date of the final Lease payment as set forth in Exhibit "A", attached hereto and made a part hereof.

3. **Rent.** On or before the date of acceptance of the Leased Equipment by Lessee, Lessee shall pay the Lessor in cash or certified funds twelve Thousand Six Hundred Thirty Seven Dollars (\$ 12,637.80) as the first Lease Payment.

Thereafter, Lessee shall pay 3 annual ~~payments~~ Lease Payments in the amount of \$ 11,753.41 beginning on the 1st day of April, 1982 and continuing for the term hereof as further set forth in Exhibit "A" hereto. Said Lease Payments shall be paid to Lessor at such address as Lessor shall indicate to Lessee. It is agreed that such Lease payment after the Initial one shall be due and owing to Lessor for Lessee's use of the Leased Equipment and shall, therefore, constitute a liquidated obligation of Lessee on said due date. If the Lessor has not received any Lease payment by the fifteenth day after such payment is due, then Lessor may impose a late penalty of five percent (5%) of the amount of the payment then due, which penalty shall be immediately due and payable by Lessee.

4. **Option to Purchase.** This is a financing Lease intended to result in Lessee's purchase of the Leased Equipment upon payment of the initial value thereof plus interest on the unpaid balance thereof. On the date of acceptance of the Leased Equipment of Lessee, Lessee shall, after payment of the Initial Lease Payment as set forth in paragraph 3 hereof, have the option to purchase the Leased Equipment for twenty Nine Thousand Four Hundred Eighty Eight & 20/100 Dollars (\$ 29,488.20), and any applicable sales or transfer taxes.

So long as Lessee is not in default in any of the terms hereof and upon the giving of thirty (30) days prior written notice, Lessee shall have the option to purchase the Leased Equipment at the end of one year from commencement date of this Lease or upon any scheduled Lease Payment date thereafter as set forth on Exhibit "A". To exercise said option, Lessee shall pay (1) the scheduled Lease Payment due on the date of exercise of the option (which payment shall include the appropriate amount of interest and reduction of principal as is required to lower the Option to Purchase Value, as such term is used on Exhibit "A", to the scheduled Option to Purchase Value due on such date as indicated on Exhibit "A") plus (2) the Option to Purchase Value due on such date as indicated on Exhibit "A" (calculated by deducting from the original cash price of the Leased Equipment the first Lease payment and the sum of that portion of subsequent Lease payments allocable to principal). If the Lessee has not exercised the option at the time the last Lease payment is due and this Lease has not otherwise been terminated, then the Lessor will, upon receipt of One Dollar (\$1.00) in addition to the final Lease payment (plus any taxes or sums due as Additional Rent hereunder), make, execute and deliver to Lessee a bill of sale transferring the Leased Equipment to Lessee free from any lien or encumbrance created by or arising through Lessor, but without other warranty.

5. **Taxes; Permits.** Lessee agrees to pay as Additional Rent and to indemnify and hold Lessor harmless from, all license, sales, use, personal property, excise or other taxes together with any penalties, fines or interest thereon imposed or levied with respect to the Leased Equipment or its possession, use or operation by Lessee. Lessee further agrees to provide all permits and licenses necessary for the installation, operation and use of the Leased Equipment and to comply with all applicable laws, rules, regulations and ordinances.

6. **Location and Use.** The Leased Equipment shall be held at and not removed from the general fire fighting area of Lessee, other than in the course of an emergency, without the Lessor's written consent. Lessee will not use, operate or maintain the Leased Equipment improperly, carelessly or in violation of any applicable law.

7. **Repairs.** Lessee, at its own cost and expense, shall maintain the Leased Equipment in good operating condition, repair and appearance, ordinary wear and tear excepted. At its own cost and expense, Lessee shall further replace any and all parts and devices which may from time to time become worn out, lost, stolen, destroyed, damaged beyond repair or rendered unfit for use for any reason whatsoever. All such replacement parts and devices shall accrue to the Leased Equipment and become the property of the Lessor. Lessor shall not be liable or responsible to Lessee for any loss, damage, liability or expense of any kind caused by or related to the Leased Equipment, or resulting from any defect in or deficiency of the Leased Equipment, or resulting from the use or operation of the Leased Equipment.

8. **Liens.** Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Equipment or any interest therein. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time.

9. **Damage or Destruction of Leased Equipment.** (a) In the event all or any part of the Leased Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee shall replace the same at Lessee's sole cost and expense within 30 days after such event and such replacement shall be substituted in this agreement by appropriate endorsement. If Lessee fails or refuses to replace such Leased Equipment within the required period, Lessor may at its option declare an amount equal to the then current option purchase price for such Leased Equipment (as specified in paragraph 4 hereof) due and payable. Upon such payment, this agreement shall terminate with respect to such Leased Equipment so paid for and Lessee thereupon shall become entitled to such Leased Equipment as-is-where-is without warranty, express or implied, with respect to any matter whatsoever except that such Leased Equipment shall not be subject to any lien or encumbrance created by or arising through Lessor. All insurance proceeds received by Lessor under the policies required under paragraph 10 hereof with respect to the Leased Equipment lost, stolen, destroyed or damaged beyond repair shall be paid to Lessee if such Leased Equipment is replaced by Lessee as required hereunder, or if Lessee fails or refuses to make the required replacement, shall be credited against the amount of the then current option purchase price payable by Lessee.

(b) No loss or damage to the Leased Equipment or any part thereof shall impose any obligation on Lessor under this agreement which shall continue in full force and effect. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Leased Equipment and for injuries or deaths of persons and damage to property, however arising from or incident to the use, operation or storage of the Leased Equipment, whether such injury or death be with respect to agents or employees of the Lessee or of third parties, and whether such damage to property be to Lessee's property or the property of others.

10. **Indemnification.** Lessee hereby assumes liability for and agrees to indemnify, protect, save and keep harmless Lessor from and against any and all liability, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind or nature imposed on, incurred by or asserted against Lessor which in any way relate to or arise out of the lease, possession, use, operation, condition, sale or other disposition of the Leased Equipment.

11. **Insurance.** At its own expense, Lessee shall cause casualty insurance to be carried and maintained with respect to the Leased Equipment and shall carry public liability and property damage insurance sufficient to protect the full value of the Leased Equipment and to protect Lessor from liability in all events. All such insurance policies shall name both Lessor and Lessee as insureds. Insurance proceeds from casualty losses to the Leased Equipment to the extent of the then current Option to Purchase Value of the Leased Equipment shall be payable solely to Lessor. Prior to delivery of the Leased Equipment, Lessee shall furnish to Lessor evidence of such insurance policies, which shall be kept in full force and effect during the term of this Lease.

12. Representations and Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LEASED EQUIPMENT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED EQUIPMENT. Lessee agrees that it has selected the Leased Equipment upon its own judgment and expressly disclaims any reliance upon any statements or representations made by Lessor or any persons on Lessor's behalf. Lessor hereby assigns to Lessee for and during the Lease term all manufacturer's warranties or guaranties, expressed or implied, issued on or applicable to the Leased Equipment and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties or guaranties at Lessee's expense. LESSOR SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR CHARACTER RESULTING FROM THE USE, MISUSE, OPERATION OR MAINTENANCE OF THE LEASED EQUIPMENT BY THE LESSEE.

Lessee represents and warrants that it has the power to enter into this Lease, that procedures for execution of this Lease required by all applicable laws, regulations and ordinances, including competitive bidding if applicable, have been complied with, and that all Lease Payments will be paid out of funds which are legally available for such purposes.

13. Default. Lessee shall be deemed to be in default hereunder upon the happening of any of the following events of default:

(a) Lessee shall fail to make any Lease payment, or to pay other payments required to be paid hereunder, or (b) Lessee shall fail to keep any such other term, covenant or condition contained herein. Upon the occurrence of an event of default as specified above, and Lessee shall fail to remedy this event of default with all reasonable dispatch within a period of thirty (30) days, then Lessor shall have the right at its option without any further demand or notice, to pursue any one or more of the following remedies: (a) re-enter and take possession of the Leased Equipment and sell, lease or sublease it; (b) take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease.

14. Assignability. Following the execution of this Lease by Lessor and Lessee, Lessor intends to make a non-recourse assignment of its entire right and interest in and to the Lease payments and Leased Equipment to Merchants National Bank & Trust Company of Indianapolis (the "Assignee"), Post Office Box 5055, Indianapolis, Indiana 46255. Such Assignee shall have full benefit of all of the covenants made by Lessee and all rights and remedies of Lessor contained herein. Lessee shall not have the right to assign its rights, duties and obligations under this Lease, either in part or in whole, without the prior written consent of Lessor or its Assignee.

15. Title. Upon the assignment of this Lease as set forth in paragraph 14 hereof, title to the Leased Equipment and any and all additions, repairs, replacements or modifications thereto shall be in the name of the Assignee. Lessee shall have no right, title or interest in the Leased Equipment or any additions, repairs, replacements or modifications thereto except as expressly set forth in this Lease.

16. Offset. Rentals or other sums payable by Lessee pursuant to this Lease shall not be subject to set-off, deduction, counterclaim or abatement and Lessee shall not be entitled to any credit against such rental or other sums for any reason whatsoever, including, but not limited to any damage or destruction of the Leased Equipment or any restriction or interference with Lessee's use of the Leased Equipment.

17. Termination and Expiration. The parties understand that as long as Lessee has sufficient appropriated funds to make the payments hereunder, it will keep this agreement in effect through the term hereof and make all payments or it will exercise its option under paragraph 4 to purchase the Leased Equipment. If Lessee does not have sufficient appropriated funds so that this agreement must be terminated, the Lessee shall not, until the date on which the term would have ended (the date of the last scheduled Lease Payment on Exhibit "A"), expend any funds for the purchase or use of property similar to the Leased Equipment subject to this agreement and shall pay the Lessor a termination charge of ten percent (10%) of the original option to purchase price offered to Lessee in paragraph 4. The preceding sentence shall not apply if Lessee has purchased the Leased Equipment under paragraph 4.

Upon the termination or expiration of this agreement, Lessee shall return the Leased Equipment to Lessor in the condition, repair, appearance and working order required in paragraph 7 hereof (unless Lessee has paid Lessor the then current option purchase price for such Leased Equipment), in the following manner as may be specified by Lessor:

(a) By delivering the Leased Equipment at Lessee's cost and expense to such place as Lessor shall specify within the continental United States.

(b) By loading each item of Leased Equipment, at Lessee's cost and expense, on board such carrier as Lessor shall specify and shipping the same, freight prepaid, to the destination designed by Lessor.

Lessee shall obtain all governmental authorizations to permit return of the Leased Equipment to Lessor and Lessee shall pay to Lessor such sum as may be necessary to cover replacement of all broken or missing parts. Lessee shall pay rentals on the Leased Equipment at the rate provided in paragraph 3 and Exhibit "A" until the Lessee has delivered the Leased Equipment to Lessor as provided above, including during the period of any delay caused by the lack of governmental authorization to return the Leased Equipment to Lessor.

18. Notice. All notices to be given under this Lease shall be made in writing and mailed to the other party at the following address or at such address as the party may provide in writing from time to time:

LESSOR: U. S. Municipal Funding, Inc.
Post Office Box 33007
Indianapolis, Indiana 46203

ASSIGNEE:

Merchants National Bank & Trust Company of Indianapolis
Post Office Box 5055
Indianapolis, Indiana 46255

LESSEE: City of Fort Wayne
One East Main St.
Fort Wayne, IN 46802

19. Miscellaneous. The waiver by Lessor of Lessee's breach of any term, covenant or condition hereof shall not be a waiver of any subsequent breach of the same or any other term, covenant or condition. This Lease, together with Exhibits hereto, constitutes the entire agreement between the parties and shall not be modified, amended, altered or changed, except in writing. This Lease shall be governed by the laws of Indiana and any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease.

20. Acceptance of Lease. This Lease shall not be binding upon the Lessor until accepted and approved by the Lessor at its principal office in Indianapolis, Indiana.

IN WITNESS WHEREOF, the said parties have set their hands and seals the day and year first above written.

LESSOR:
U. S. MUNICIPAL FUNDING, INC.
Midwest Fire & Safety Equipment
By: Company, Inc.

LESSEE: City of Fort Wayne, Indiana

By: Conrad F. Shwartz Esq. Vice Pres.

By: [Signature] Title

By: Charles W. Blumenthal Title City Clerk

Accepted and Approved at Indianapolis, Indiana:
U. S. MUNICIPAL FUNDING, INC.

By: _____ Title

By: _____

By: _____ Title

Title: _____

By: _____ Title

Date: _____

By: _____ Title

ASSIGNMENT

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, the undersigned hereby sells, assigns, transfers and sets over unto Merchants National Bank & Trust Company of Indianapolis, its successors and assigns (hereinafter referred to as "Bank") the within Lease With Option To Purchase and all right, title and interest in and to the Leased Equipment and all rights and remedies, under said Lease with power in said Assignee to assign the same and either in Assignee's own name, or in the name of the undersigned, for the Bank's exclusive benefit or take all such legal or other proceedings as undersigned might have taken save for this assignment.

Dated this _____ day of _____, 19____.

U. S. Municipal Funding, Inc.

By: _____

Its: _____

Acceptance of Assignment:
Merchants National Bank and Trust Company of Indianapolis

By: _____

Its: _____

This Lease, made and entered into this 21st day of November, 1980, by and between **U.S. MUNICIPAL FUNDING, INC.**, a corporation organized under the laws of the State of Indiana and having its principal office in the City of Indianapolis, Indiana (hereinafter referred to as "Lessor"), and City of Fort Wayne a municipal corporation of the State of Indiana (hereinafter referred to as "Lessee");

WITNESSETH:

That in consideration of the mutual agreements herein contained, the parties do hereby covenant and with each other as follows:
 1. **Property Description.** The Lessor does hereby lease to the Lessee the following described property, hereinafter referred to as the "Leased Equipment":

Two (2) Midwest-Emergency One quick attack rescue pumpers
 Model 15060 mounted on 1981 International
 chassis Model 1724.

2. **Term.** The term of this Lease shall commence on Oct. 15, 1981, which shall be on or about the date of acceptance of the Leased Equipment by the Lessee, and, unless earlier terminated, shall continue until the date of the final Lease payment as set forth in Exhibit "A", attached hereto and made a part hereof.

3. **Rent.** On or before the date of acceptance of the Leased Equipment by Lessee, Lessee shall pay the Lessor in cash or certified funds Thirty Two Thousand Five Hundred Seventy Dollars (\$ 32,573.26) as the first Lease Payment.
 Thereafter, Lessee shall pay Three & 26/100 annual ~~LEASE~~ Lease Payments in the amount of \$ 30,293.78 beginning on the 1st day of April, 19 82

and continuing for the term hereof as further set forth in Exhibit "A" hereto. Said Lease Payments shall be paid to Lessor at such address as Lessor shall indicate to Lessee. It is agreed that such Lease payment after the Initial one shall be due and owing to Lessor for Lessee's use of the Leased Equipment and shall, therefore, constitute a liquidated obligation of Lessee on said due date. If the Lessor has not received any Lease payment by the fifteenth day after such payment is due, then Lessor may impose a late penalty of five percent (5%) of the amount of the payment then due, which penalty shall be immediately due and payable by Lessee.

4. **Option to Purchase.** This is a financing Lease intended to result in Lessee's purchase of the Leased Equipment upon payment of the initial value thereof plus interest on the unpaid balance thereof. On the date of acceptance of the Leased Equipment of Lessee, Lessee shall, after payment of the Initial Lease Payment as set forth in paragraph 3 hereof, have the option to purchase the Leased Equipment for Seventy Six Thousand, four and 26/100----- Dollars (\$ 76,004.26), and any applicable sales or transfer taxes.

So long as Lessee is not in default in any of the terms hereof and upon the giving of thirty (30) days prior written notice, Lessee shall have the option to purchase the Leased Equipment at the end of one year from commencement date of this Lease or upon any scheduled Lease Payment date thereafter as set forth on Exhibit "A". To exercise said option, Lessee shall pay (1) the scheduled Lease Payment due on the date of exercise of the option (which payment shall include the appropriate amount of interest and reduction of principal as is required to lower the Option to Purchase Value, as such term is used on Exhibit "A", to the scheduled Option to Purchase Value due on such date as indicated on Exhibit "A") plus (2) the Option to Purchase Value due on such date as indicated on Exhibit "A" (calculated by deducting from the original cash price of the Leased Equipment the first Lease payment and the sum of that portion of subsequent Lease payments allocable to principal). If the Lessee has not exercised the option at the time the last Lease payment is due and this Lease has not otherwise been terminated, then the Lessor will, upon receipt of One Dollar (\$1.00) in addition to the final Lease payment (plus any taxes or sums due as Additional Rent hereunder), make, execute and deliver to Lessee a bill of sale transferring the Leased Equipment to Lessee free from any lien or encumbrance created by or arising through Lessor, but without other warranty.

5. **Taxes; Permits.** Lessee agrees to pay as Additional Rent and to indemnify and hold Lessor harmless from, all license, sales, use, personal property, excise or other taxes together with any penalties, fines or interest thereon imposed or levied with respect to the Leased Equipment or its possession, use or operation by Lessee. Lessee further agrees to provide all permits and licenses necessary for the installation, operation and use of the Leased Equipment and to comply with all applicable laws, rules, regulations and ordinances.

6. **Location and Use.** The Leased Equipment shall be held at and not removed from the general fire fighting area of Lessee, other than in the course of an emergency, without the Lessor's written consent. Lessee will not use, operate or maintain the Leased Equipment improperly, carelessly or in violation of any applicable law.

7. **Repairs.** Lessee, at its own cost and expense, shall maintain the Leased Equipment in good operating condition, repair and appearance, ordinary wear and tear excepted. At its own cost and expense, Lessee shall further replace any and all parts and devices which may from time to time become worn out, lost, stolen, destroyed, damaged beyond repair or rendered unfit for use for any reason whatsoever. All such replacement parts and devices shall accrue to the Leased Equipment and become the property of the Lessor. Lessor shall not be liable or responsible to Lessee for any loss, damage, liability or expense of any kind caused by or related to the Leased Equipment, or resulting from any defect in or deficiency of the Leased Equipment, or resulting from the use or operation of the Leased Equipment.

8. **Liens.** Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Equipment or any interest therein. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time.

9. **Damage or Destruction of Leased Equipment.** (a) In the event all or any part of the Leased Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee shall replace the same at Lessee's sole cost and expense within 30 days after such event and such replacement shall be substituted in this agreement by appropriate endorsement. If Lessee fails or refuses to replace such Leased Equipment within the required period, Lessor may at its option declare an amount equal to the then current option purchase price for such Leased Equipment (as specified in paragraph 4 hereof) due and payable. Upon such payment, this agreement shall terminate with respect to such Leased Equipment so paid for and Lessee thereupon shall become entitled to such Leased Equipment as-is-where-is without warranty, express or implied, with respect to any matter whatsoever except that such Leased Equipment shall not be subject to any lien or encumbrance created by or arising through Lessor. All insurance proceeds received by Lessor under the policies required under paragraph 10 hereof with respect to the Leased Equipment lost, stolen, destroyed or damaged beyond repair shall be paid to Lessee if such Leased Equipment is replaced by Lessee as required hereunder, or if Lessee fails or refuses to make the required replacement, shall be credited against the amount of the then current option purchase price payable by Lessee.

(b) No loss or damage to the Leased Equipment or any part thereof shall impose any obligation on Lessor under this agreement which shall continue in full force and effect. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Leased Equipment and for injuries or deaths of persons and damage to property, howsoever arising from or incident to the use, operation or storage of the Leased Equipment, whether such injury or death be with respect to agents or employees of the Lessee or of third parties, and whether such damage to property be to Lessee's property or the property of others.

10. **Indemnification.** Lessee hereby assumes liability for and agrees to indemnify, protect, save and keep harmless Lessor from and against any and all liability, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind or nature imposed on, incurred by or asserted against Lessor which in any way relate to or arise out of the lease, possession, use, operation, condition, sale or other disposition of the Leased Equipment.

11. **Insurance.** At its own expense, Lessee shall cause casualty insurance to be carried and maintained with respect to the Leased Equipment and shall carry public liability and property damage insurance sufficient to protect the full value of the Leased Equipment and to protect Lessor from liability in all events. All such insurance policies shall name both Lessor and Lessee as insureds. Insurance proceeds from casualty losses to the Leased Equipment to the extent of the then current Option to Purchase Value of the Leased Equipment shall be payable solely to Lessor. Prior to delivery of the Leased Equipment, Lessee shall furnish to Lessor evidence of such insurance policies, which shall be kept in full force and effect during the term of this Lease.

12. **Representations and Warranties.** LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LEASED EQUIPMENT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED EQUIPMENT. Lessee agrees that it has selected the Leased Equipment upon its own judgment and expressly disclaims any reliance upon any statements or representations made by Lessor or any persons on Lessor's behalf. Lessor hereby assigns to Lessee for and during the Lease term all manufacturer's warranties or guaranties, expressed or implied, issued on or applicable to the Leased Equipment and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties or guaranties at Lessee's expense. LESSOR SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR CHARACTER RESULTING FROM THE USE, MISUSE, OPERATION OR MAINTENANCE OF THE LEASED EQUIPMENT BY THE LESSEE.

Lessee represents and warrants that it has the power to enter into this Lease, that procedures for execution of this Lease required by all applicable laws, regulations and ordinances; including competitive bidding if applicable, have been complied with, and that all Lease Payments will be paid out of funds which are legally available for such purposes.

13. **Default.** Lessee shall be deemed to be in default hereunder upon the happening of any of the following events of default:

(a) Lessee shall fail to make any Lease payment, or to pay other payments required to be paid hereunder, or (b) Lessee shall fail to keep any such other term, covenant or condition contained herein. Upon the occurrence of an event of default as specified above, and Lessee shall fail to remedy this event of default with all reasonable dispatch within a period of thirty (30) days, then Lessor shall have the right at its option without any further demand or notice, to pursue any one or more of the following remedies: (a) re-enter and take possession of the Leased Equipment and sell, lease or sublease it; (b) take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease.

14. **Assignability.** Following the execution of this Lease by Lessor and Lessee, Lessor intends to make a non-recourse assignment of its entire right and interest in and to the Lease payments and Leased Equipment to Merchants National Bank & Trust Company of Indianapolis (the "Assignee"), Post Office Box 5055, Indianapolis, Indiana 46255. Such Assignee shall have full benefit of all of the covenants made by Lessee and all rights and remedies of Lessor contained herein. Lessee shall not have the right to assign its rights, duties and obligations under this Lease, either in part or in whole, without the prior written consent of Lessor or its Assignee.

15. **Title.** Upon the assignment of this Lease as set forth in paragraph 14 hereof, title to the Leased Equipment and any and all additions, repairs, replacements or modifications thereto shall be in the name of the Assignee. Lessee shall have no right, title or interest in the Leased Equipment or any additions, repairs, replacements or modifications thereto except as expressly set forth in this Lease.

16. **Offset.** Rentals or other sums payable by Lessee pursuant to this Lease shall not be subject to set-off, deduction, counterclaim or abatement and Lessee shall not be entitled to any credit against such rental or other sums for any reason whatsoever, including, but not limited to any damage or destruction of the Leased Equipment or any restriction or interference with Lessee's use of the Leased Equipment.

17. **Termination and Expiration.** The parties understand that as long as Lessee has sufficient appropriated funds to make the payments hereunder, it will keep this agreement in effect through the term hereof and make all payments or it will exercise its option under paragraph 4 to purchase the Leased Equipment. If Lessee does not have sufficient appropriated funds so that this agreement must be terminated, the Lessee shall not, until the date on which the term would have ended (the date of the last scheduled Lease Payment on Exhibit "A"), expend any funds for the purchase or use of property similar to the Leased Equipment subject to this agreement and shall pay the Lessor a termination charge of ten percent (10%) of the original option to purchase price offered to Lessee in paragraph 4. The preceding sentence shall not apply if Lessee has purchased the Leased Equipment under paragraph 4.

Upon the termination or expiration of this agreement, Lessee shall return the Leased Equipment to Lessor in the condition, repair, appearance and working order required in paragraph 7 hereof (unless Lessee has paid Lessor the then current option purchase price for such Leased Equipment), in the following manner as may be specified by Lessor:

(a) By delivering the Leased Equipment at Lessee's cost and expense to such place as Lessor shall specify within the continental United States.

(b) By loading each item of Leased Equipment, at Lessee's cost and expense, on board such carrier as Lessor shall specify and shipping the same, freight prepaid, to the destination designed by Lessor.

Lessee shall obtain all governmental authorizations to permit return of the Leased Equipment to Lessor and Lessee shall pay to Lessor such sum as may be necessary to cover replacement of all broken or missing parts. Lessee shall pay rentals on the Leased Equipment at the rate provided in paragraph 3 and Exhibit "A" until the Lessee has delivered the Leased Equipment to Lessor as provided above, including during the period of any delay caused by the lack of governmental authorization to return the Leased Equipment to Lessor.

18. **Notice.** All notices to be given under this Lease shall be made in writing and mailed to the other party at the following address or at such address as the party may provide in writing from time to time:

LESSOR:	U. S. Municipal Funding, Inc. Post Office Box 33007 Indianapolis, Indiana 46203	ASSIGNEE:	Merchants National Bank & Trust Company of Indianapolis Post Office Box 5055 Indianapolis, Indiana 46255
LESSEE:	City of Fort Wayne One East Main St. Fort Wayne, IN 46802		

19. **Miscellaneous.** The waiver by Lessor of Lessee's breach of any term, covenant or condition hereof shall not be a waiver of any subsequent breach of the same or any other term, covenant or condition. This Lease, together with Exhibits hereto, constitutes the entire agreement between the parties and shall not be modified, amended, altered or changed, except in writing. This Lease shall be governed by the laws of Indiana and any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease.

20. **Acceptance of Lease.** This Lease shall not be binding upon the Lessor until accepted and approved by the Lessor at its principal office in Indianapolis, Indiana.

IN WITNESS WHEREOF, the said parties have set their hands and seals the day and year first above written.

LESSOR:
U. S. MUNICIPAL FUNDING, INC.
Midwest Fire & Safety Equipment
By: Company, Inc.
By: David J. Swartz, Vice Pres.

LESSEE: City of Fort Wayne, Indiana

By: Charles D. Whitman, Jr. Title

By: Charles D. Whitman, Jr. Title City Clerk

By: _____ Title _____

By: _____ Title _____

By: _____ Title _____

By: _____ Title _____

By: _____ Title _____

By: _____ Title _____

By: _____ Title _____

ASSIGNMENT

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, the undersigned hereby sells, assigns, transfers and sets over unto Merchants National Bank & Trust Company of Indianapolis, its successors and assigns (hereinafter referred to as "Bank") the within Lease With Option To Purchase and all right, title and interest in and to the Leased Equipment and all rights and remedies, under said Lease with power in said Assignee to assign the same and either in Assignee's own name, or in the name of the undersigned, for the Bank's exclusive benefit or take all such legal or other proceedings as undersigned might have taken save for this assignment.

Dated this _____ day of _____, 19____.

U. S. Municipal Funding, Inc.

By: _____

Its: _____

Acceptance of Assignment:

Merchants National Bank and Trust Company of Indianapolis

By: _____

Its: _____

EXHIBIT "A"

To Lease With Option to Purchase Between U. S. Municipal Funding, Inc. and
City of Fort Wayne, Indiana dated November 21,
 1980.

<u>LEASE PAYMENT NUMBER</u>	<u>LEASE PAYMENT DUE DATE</u>	<u>LEASE PAYMENT AMOUNT</u>	<u>INTEREST PORTION*</u>	<u>PRINCIPAL PORTION</u>	<u>OPTION TO PURCHASE VALUE**</u>
1.	ON OR BEFORE DEL.	32,573.26	.00	32,573.26	76,004.26
2.	April 1, 1982	30,293.78	7,220.41	23,073.37	52,930.89
3.	April 1, 1983	30,293.78	5,028.44	25,265.34	27,665.55
4.	April 1, 1984	30,293.78	2,628.23	27,665.55	1.00

* Interest calculations based on 9.5 % annual effective rate.

** After payment of Lease payment amount otherwise due on date indicated.

EXHIBIT "A"

To Lease With Option to Purchase Between U. S. Municipal Funding, Inc. and
City of Fort Wayne, Indiana dated November 21,

19 80.

<u>LEASE PAYMENT NUMBER</u>	<u>LEASE PAYMENT DUE DATE</u>	<u>LEASE PAYMENT AMOUNT</u>	<u>INTEREST PORTION*</u>	<u>PRINCIPAL PORTION</u>	<u>OPTION TO PURCHASE VALUE**</u>
1.	ON OR BEFORE DEL.	12,637.80	.00	12,637.80	29,488.20
2.	April 1, 1982	11,753.41	2,801.38	8,952.03	20,536.17
3.	April 1, 1983	11,753.41	1,950.94	9,802.47	10,733.71
4.	April 1, 1984	11,753.41	1,019.70	10,733.71	1.00

* Interest calculations based on 9.5 % annual effective rate.

** After payment of Lease payment amount otherwise due on date indicated.

Admn. Appr. _____

DIGEST SHEET

TITLE OF ORDINANCE Resolution Q-81-02-42

DEPARTMENT REQUESTING ORDINANCE Fire Department

SYNOPSIS OF ORDINANCE A resolution approving and ratifying lease
purchase agreements with Midwest Fire & Safety Equipment
Company, Inc. for firefighting equipment.
Purchase of said equipment was previously approved by
City Council.

EFFECT OF PASSAGE Lease purchase of two quick attach pumpers and
one extending water tower to aid the Fire Department in its work.

EFFECT OF NON-PASSAGE None of the above.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) \$171,352.63

ASSIGNED TO COMMITTEE (PRESIDENT) _____

Janice